SLCs would be limited to $3.50, or perhaps a somewhat lower number under certain conditions. (¶ 65) The multi-line business and additional residential lines SLCs would be entirely uncapped. (¶ 65)

3. Under a so-called market-based proposal, incumbent LECs would be able to decide what portion of the interstate common line costs would be billed to the end users and what portion would be billed to the toll carrier. (¶ 215)

The State Advocates believe there is a much more reasonable and pro-competitive solution that any these alternatives.

a. <u>The SLC should be eliminated in its entirety</u>

The State Advocates suggest a market-based alternative to bill all of the interstate portion of the common line cost to the IXCs and let the market control how the IXCs bill those costs through to the end users. This competitive-based solution would let the market determine in what billing form the IXCs would pass through the interstate carrier common line charges to the end users, if at all.

The FCC has determined that the interexchange toll market is competitive.(¶ 150) AT&T is no longer considered a "dominant carrier". (¶193) The IXCs and resellers of today offer many different toll calling plans and packages with varying fixed charges, contracts, per-minute charges, volume discounts, off-peak discounts, frequent number called discounts and numerous other rate structure variations in an attempt to make their toll services more attractive to end users. In this atmosphere, there is no need for the FCC to decide how much of the

interstate common line should be billed to the end user in a fixed monthly charge, and how much should be billed in other ways. Let the market decide.[19]

If the FCC's goal is to let competitive markets take over the pricing once those competitive markets have developed, then the FCC should let the competitive market determine how the costs of providing interexchange service are to be billed through to the end users. Utilizing market forces to eliminate the need for price regulation is one of the FCC's clearly stated goals. This is also preferable to letting companies with monopoly power, such as the LECs specify that billing structure.

> The FCC's goal for access charge reform is to promote competition and,
>
> ...enable marketplace forces to eliminate the need for price regulation of these services. (¶14).

The FCC also states:

> Our goal is to end up with access charge rate structures that a competitive market for access services would produce. (¶13).

The FCC can now meet its own stated goals by allowing the market forces decide how much of the interstate common line costs would be billed to the end user as a fixed charge, and how much would be billed otherwise.

Under this proposal, the LECs would bill the IXCs collectively for their interstate common line costs. The total amount billed would be equal to the amount that would otherwise

[19]State Advocates are aware that the present interexchange marketplace does not fully replicate a competitive market. As there are a limited number of facility-based suppliers, the underlying provision of interexchange service may be oligopolistic. However, there appear to be a sufficient number of competitors in the pricing interface between the IXCs and the customers to allow this market to determine the manner in which interstate common line costs are billed through to the end user.

be generated from the sum of the SLCs plus the interstate CCLCs. Although the exact amount would depend upon the adjustments made for the removal of payphones, local transport service (LTS) or other FCC adjustments to the common line costs, the present total interstate common line revenues to be recovered total approximately $5 to $5.50 per month per line.[20] The LECs would bill these amounts to the various IXCs through the methods discussed in a later section (i.e. based upon presubscribed lines, or a combination of the presubscribed lines and interstate CCLC minutes of use) or other reasonable method as specified by the FCC. Neither the FCC nor the LEC would specify to the individual IXCs how they would recover these or other costs from their end user customers.

It is important to note that the State Advocates are advocating that all interstate common line costs may be recovered from the end user by the IXC without any FCC preconditions as to how those charges should be recovered. State Advocates are one of the few parties actually advocating market-based pricing while other parties advocate that either the FCC or the LECs make the decision as to what portion of these costs should be billed to the end user as fixed monthly charges. Such proposals are not advocating market-based pricing, but in fact are recommending that the prices be determined by those with monopoly or regulatory power.[21]

Under this proposal, market forces and competitive pressures among the many IXCs should ensure that the interstate revenues are recovered in the most efficient manner from

[20]Table 1, Paragraph 29, Subscriber Line Revenues plus carrier common line revenues divided by the number of common lines in service.

[21]As noted below, the State Advocates continue to support toll rate deaveraging as Congress intended pursuant to Section 254(g) of the Telecommunications Act of 1996.

end-users. The IXC will be given the opportunity to use flat-rate charges, per-minute usage charges or a combination of these charges to recover its portion of the total interstate common line cost payments. This is the most reasonable and pro-competitive method of recovering interstate common line costs. Under this method, the market, not the FCC or the companies with monopoly power, such as the LECs, would decide what portion of the interstate costs would be recovered from the end users as a flat rate, and what portion in per minute or other charges.[22]

If the FCC chooses to retain control of how the interstate common line costs are billed through to the end users, State Advocates offer an alternative recommendation: the interstate common line revenue requirement should be split 50/50 between the SLC and the flat rate per line charge billed to the IXCs.

This is a reasonable split, if a prescribed split is adopted. When the Commission last addressed the SLC charge in 1987, they accepted the recommendation of the Joint Board that a fair share of the common line revenues to be recovered by the IXCs through the CCLC would be approximately 50% of the interstate loop costs, and the remaining 50% should be recovered

[22]The State Advocates recognize that many consider the underlying provision of interexchange service to oligopolistic. To help assure that the end user price is determined by a competitive market, State Advocates recommend that the FCC monitor the pricing which occurs. Specifically, the FCC should have its staff report relevant information annually. This information should include any reports or indications that interexchange wholesalers or carriers are exerting pressure on, or "guidance" to, other IXCs or resellers pertaining to how much of the interexchange costs should be billed to the end users as a fixed monthly charge. This information should also include the extent to which the major IXCs are offering pricing options to the residential and small business end users which includes no, or a reasonable fixed monthly fee. The uniformity among the major IXCs of the fixed monthly fee in their most popular residential and small business rates should be reported. In the event this or other information indicates pricing cooperation among the IXCs, or a lack of meaningful choice being offered the end users, then the State Advocates reserve the right to reconsider and seek appropriate action.

through the SLC.[23] Currently, approximately two-thirds of the interstate carrier common line revenue requirement is being recovered from the SLC, and only one-third from the CCLCs.[24]

It should be noted that recovering half of the interstate common line costs from the carriers is in no way an unreasonable recovery. This amounts to recovering approximately 12.5% of the common line costs from the IXCs.[25] (This is one-eighth of what the IXCs would have to pay if a separate line was used to carry interstate traffic, instead of the interstate traffic sharing the common lines with intrastate traffic.) This is not an unreasonable allocation to the IXCs, since the IXCs' traffic on the common lines currently represents approximately 15% of the total traffic on those lines.[26]

However, if the FCC does prescribe what amount of the interstate common line cost will be directly billed to the end users, then the maximum SLC which should apply to the primary residential line and single line business lines should be $3.50, adjusted downward for the removal of the payphone costs and LTS costs, as the Joint Board recommended.

b. <u>The CCLC should be assessed to the IXCs on a flat rate basis</u>

The Joint Board recommended that an administratively simple mechanism for the assessment of the flat rate per line charge among the IXCs be based upon presubscribed

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[23]MTS and WATS Market Structure, Amendment of part 67 of the Commission's Rules and Establishment of a Joint-Board, *Report and Order*, 2 FCC Rcd 2953, 2958 n. 36, (1987).

[24]SLC revenue is $7.1 million, divided by SLC revenue of $7.1 million plus the CCLC revenue of $3.7 million = 65.7%. Table 1, Paragraph 29.

[25]One-half of the 25% interstate allocation of unseparated common line costs equals 12.5%..

[26]Table 4.17, which lists interstate minutes divided by Table 4.18, which lists total minutes, from the Monitoring Report, CC Docket No. 87-339, May 1996.

interexchange carrier (PIC) lines. (¶ 60) The Competitive Policy Institute has suggested several other alternative ways of assessing the interstate loop costs among the IXCs. (¶61) State Advocates do not have a strong preference or concern as to how these costs are spread among the IXCs, provided they are billed to the IXCs instead of being directly billed to end users or other customers. The FCC should prescribe the method for that cost to be allocated among the IXCs. The IXCs could negotiate among themselves, provided that it was clearly understood that the result of the negotiation had to be a method of allocating those costs among the IXCs, not a method of shifting those costs onto other customer classes. The State Advocates propose that such a recommendation also should not specify how the IXCs bill these costs through to the end users or otherwise recover these costs. That is a matter that would be best settled in the open market.

In ¶60, the Commission asked for comments pertaining to customers who elect not to choose a PIC, and to traffic that is dialed around the PIC. Very few customers, if any, in equal access exchanges do not have a PIC. If a customer does not select a PIC, then the LEC normally assigns a PIC to that customer following random selection procedures. For example, during equal access balloting, customers who do not select a PIC are randomly assigned a PIC. Those customers who have not made a PIC selection are assigned PICs in the same percent distribution as those customers who did select a PIC. Therefore, at the end of the equal access balloting and assignment process, virtually all customers have a PIC, even those who did not choose one.

State Advocates would advise the Commission to carefully consider any problem related to some customers not having a PIC. Virtually all customers in an equal access exchange have a PIC, regardless of whether the PIC was chosen by them or assigned.

In non-equal access exchanges, which now represent only a small percent of all lines, the LEC has effectively selected a "1+" IXC. Therefore, that IXC is effectively the PIC for customers in that exchange for purposes of these cost assignments.

There are strong precedents and good reasons for the use of presubscribed lines to assess costs among the IXCs. Currently, the universal service fund and lifeline service charges are assessed among the IXCs based upon each IXC's share of its presubscribed access lines. IXCs with less than 0.05% of the total presubscribed common lines are excluded from this allocation.(¶27) Further, assuming some degree of increasing competition among LECs, the PIC takes on greater importance and value. If carriers begin to compete in order to provide a full range of telecommunications services, becoming the PIC may very well lead to the possibility that such a carrier will also become the provider of other services as well. Thus, the PIC classification is a fair means of distributing the common line costs among carriers.

State Advocates certainly understand the problem created when customers dial around the PIC in order to place long distance calls. One potential solution to this problem would be to assess one-half of the total interstate common line costs among the IXCs based upon the PICs and the other half based upon the IXCs' percentage share of interstate minutes of use over the common lines.[27] This procedure would recognize the advantages of using the PIC allocation,

[27]See one of the CPI recommendations in ¶61.

but would also prevent the dial around IXCs from using the common lines for free. This or any other reasonable mechanism to allocate the costs among the IXCs is acceptable to the State Advocates. The key interests on this issue are that the appropriate costs be billed to the IXCs and that the IXCs not be allowed to utilize the common lines for free.

It should be noted that the current CCLC recovery amounts received from the IXCs towards the common line costs is quite low. The interstate CCLC supports less than nine percent of the common line costs.[28] Since 15% of the traffic on the common lines is interstate switched access traffic,[29] it is clear that the IXCs at the present assessment level are getting a bargain.

B. Local Switching

The FCC states that the line card costs and perhaps some other costs of the local switch are NTS costs. The FCC proposes that the NTS portion of the local switch costs be recovered through flat charges. (¶72) The FCC proposes that a portion of local switching costs should be recognized as being NTS only for purposes of Part 69, which allocates interstate costs among the interstate baskets. The FCC does not propose that these NTS local switching costs should be considered NTS for purposes of separating the costs between the interstate and intrastate jurisdictions in Part 36. This is a clear inconsistency. In 1987, the NTS portion of the local switching equipment costs were separately identified and were separated between

[28]Generally the common line costs are recovered in the interstate jurisdiction (FCC Rules 36.154(c)). Approximately one-third of these interstate costs are recovered in the interstate CCLC. (CCLC divided by (CCLC + SLC) from Table 1, ¶29 of the Notice)

[29]FCC Monitoring Report, May, 1996, Table 4.17 divided by Table 4.18.

jurisdictions using the NTS allocators. However, starting in 1988, the separations procedures were changed so that the NTS portion of the local switching equipment were effectively separated using traffic sensitive allocators. The practical impact of this change was to shift interstate costs into the intrastate jurisdiction. The NTS allocator was approximately 25% interstate[30], whereas the traffic sensitive allocator was less than 15% interstate. Therefore, the result of changing the treatment of these NTS costs was to shift significant costs from the interstate to intrastate jurisdiction.

If the FCC has now decided to recognize that a portion of local switching costs are NTS, the Commission should recognize that fact for purposes of separations in Part 36 as well as for purposes of rate design.[31] Otherwise the cost treatment is inconsistent and, if implemented, would improperly result in transferring costs from the interstate to the intrastate jurisdiction. Identification of costs as being NTS does not mean those costs must all be recovered from the end user.

The Notice presents a possibility of establishing a flat rate element for the NTS local switching costs, but the Notice does not state to which customer group that flat rate would be billed (i.e., end users, IXCs, or a combination of the two). As the FCC has tentatively concluded that all of the NTS common line costs should be billed to the end users for multi-line

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[30]In the past, the NTS allocator was called the "frozen SPF" which varied state by state, but the nationwide average was more than 25%. Over the transition period, this was converted to the flat 25% gross allocator.

[31]State Advocates recognize that throughout the Notice the FCC makes reference to separations changes. In these Comments, State Advocates address these separations issues. However, State Advocates wish to emphasize that the FCC is not authorized to make such separations changes by acting alone, and must refer all such separations issues to a Joint Board.

business lines and residential lines other than the primary line, State Advocates are concerned that the establishment of the flat rate element for the NTS local switching costs might lead to shifting all of those costs onto the end user.

The FCC recommendation may well result in the following illogical result. For purposes of separations, at least a portion of the local switching costs are assumed to be traffic sensitive, resulting in a higher percent of those costs being separated to the intrastate jurisdiction in Part 36 than if they were considered to be NTS. However, the portion of those costs that are allocated to the interstate jurisdiction in separations would be considered NTS. This might then justify recovering all of those costs from the end users (or at least for multi-line business lines and residential lines other than the primary line).

As discussed in the common lines section, even if a portion of the local switching equipment is NTS, that does not justify recovering all of those costs from the end users. The common line, as well as any portion of the switch that is NTS, is shared by a number of services including services provided to the IXCs, such as exchange access services.

The FCC in ¶ 37 proposes a separate charge for call setup. State Advocates have no objection to this concept and believe that the cost associated with the call setup should be appropriately recovered from the customers causing those costs.

C. Transport

The FCC asks a number of questions pertaining to transport, many of them focused on the TIC which has been remanded by the Court. (¶ 85) In this Section, State Advocates submit comments pertaining to the TIC, but will not address the other transport structure issues raised by the FCC in ¶ 86 through ¶ 95.

Starting at ¶ 101, the FCC asked a number of questions exploring why the revised transport rates did not produce the same revenue as the prior transport rates had produced, necessitating the TIC to recover the revenue shortfall. There are undoubtedly many reasons for these revenue differences. The State Advocates are aware that in telecommunications, rates frequently are not set to incorporate the full reasonable share of the joint and common costs. In telecommunications, a reasonable rate may have to be set several times the incremental cost in order to cover a proper share of the joint and common costs. One of the reasons the Part 69 analysis is performed is to assure that the cost of a category or subcategory of services includes a reasonable share of the joint and common costs. For example, residential local exchange service in the State of Washington is priced several times its incremental cost, so that service will also support a portion of the common line and other joint and common costs.

> "If USWC were to exit the local residential exchange market, its revenues would decrease by about $14 per customer, and its costs would decrease by about $4.42 per customer."[32]

Unless some procedure that assures that the joint and common costs are properly recovered is employed, such as Part 69 or some forward-looking equivalent, it is very easy to inadvertently set telecommunications rates far below the rate that would cover all of the proper

[32]Page 90, Fifteenth Supplemental Order, Docket No. UT-950200 before the Washington Utilities and Transportation Commission, Commission Decision and Order Rejecting Tariff Revisions; Requiring Refiling, dated April 11, 1996.

costs, including a reasonable share of the joint and common costs. The use of forward-looking costs does not eliminate the need to recover joint and common costs.[33]

The Part 36 separations rules and the Part 69 cost allocations rules allocate costs to various categories, including transport. (¶ 96) These costs include a share of the joint and common costs of the LECs. In the past, the transport rates were designed to cover the costs so determined.[34] However, when the transport rates were redesigned, the rates determined for the various transport rate elements did not produce revenues sufficient to cover the full allocated cost of transport services. Therefore, the Commission established a TIC rate element that essentially made up the difference between the new rates and the revenues that had been generated from the rates that were based upon the full cost of transport service.

The FCC intentionally set the charge for the tandem switch rate element below its fully allocated costs, and put the remainder of the tandem switch revenue requirement into the TIC. (¶ 82) The TIC also contained other costs that apparently should have been included in other specific transport rates, at least according to comments of other parties as discussed in the FCC Notice ¶ 101 through ¶ 107.

Briefly, State Advocates ask the FCC to consider the following points:

1. The experience with the TIC indicates that it is appropriate to design rates that, in themselves, recover all of the relevant costs. Excluding some of the costs of the services, or a

[33]It is reasonable to expect that the LECs will have many types of joint and common costs in the future. For example, in the future we are sure the LECs will still have executives, attorneys, office buildings, investments in shared facilities, etc.

[34]At least the initial TIC was based upon those fully allocated costs.

reasonable share of the joint and common costs associated with those services, from the price charged for the service, is inappropriate. Grouping those excluded costs and the excluded share of the joint and common costs in a separate temporary "surcharge" leads to confusion and continuing problems, as is occurring with the TIC. It is more advisable to establish the price for each service or element such that it covers its fully allocated cost, including that service's or element's reasonable share of the joint and common costs.

2. A "temporary" surcharge only defers dealing with the issues to a later day. It is better to set proper and reasonable rates, including a reasonable share of the joint and common costs, instead of lumping these and other costs in a surcharge that must be dealt with later.

3. The experiences with the TIC should be considered when evaluating the wisdom of establishing a new "temporary surcharge" for another purposes. (¶ 18)

State Advocates recommend a three step procedure for eliminating the TIC:

a. The FCC should correct and identify as many as possible the cost misallocations included in the TIC that should have been included in specific transport rate elements. (See ¶ 116 and ¶ 117) For example, 80% of the tandem switching costs, which were not recovered from the tandem switching rates, should be included in the tandem switching rates.

b. Those adjustments to costs which can be uniformally applied to all services, not just shifting joint and common costs among services, should be implemented. In addition, the State Advocates do not agree that the LECs are entitled to receive recovery of all embedded costs.

c. The remaining transport costs which are included in the TIC and cannot be identified with specific transport rate elements, represent a portion of the joint and common costs.

They should properly be recovered from the transport rate elements. Therefore, these unassigned transport service category costs should be recovered by increasing all of the transport rate elements in some reasonable manner so that the transport rate elements in total cover the full transport costs. Any alternative that, in some manner, dumps costs that are properly associated with transport on some other services, is an undesirable result.

VI. MARKET BASED APPROACH TO ACCESS REFORM

A. Because of LECs' Market Power, Market Should Not Be Used To Set Access Rates

State Advocates submit that the "market" should not set the rates for access because of the dominant market position of the unencumbent LECs. In order to have a true market-based solution, pricing must result from a competitive market, not a market dominated by a monopoly or a company with great power in that market. In ¶ 215, the FCC asked whether the incumbent LECs should be allowed to decide how much of the interstate access charges to collect from the end users and how much to collect from the carriers once certain conditions were met. Allowing the LECs to make this choice would not be a market-based solution, since the LECs have marketing and monopoly power because of their dominance of the local exchange marketplace and their control of the bottleneck common line facilities. The FCC properly expects that they will continue to carry that bottleneck power for a significant time in the future. (See footnote in ¶ 216)

This proposal is called the "market-based" proposal. Giving the control to a company that still is expected to have significant market and monopoly power is not a "market-based" solution.

The LECs are also toll carriers. Many of them, or their affiliates, are currently IXCs out of region, and plan to be IXCs within their regions. Consequently, giving the LECs the discretion to decide how the interstate common line costs are split among the IXCs and the end users is a conflict of interest. In such a position, the LECs may find that it is to their advantage as an IXC to shift such costs to the end users.

Another fundamental concern with the so-called "market-based" approach is that it is reasonable to expect that the LECs would use that pricing freedom to charge higher access charges in those areas where they have little or no competition, thereby generating a higher contribution from those areas where they had monopoly power. NYNEX's proposal clearly indicates they would use flexibility to obtain higher contributions in those areas where they have less competition. (¶114)

Allowing the LECs to extract monopoly profits/higher contributions from those areas where they would continue to have some monopoly power is contrary to what would occur if true competition existed. This is contrary to the FCC's stated goals, and would be allowing the abuse of that monopoly power. (¶ 114)

It is important to consider that competition within the local exchange market is in its very earliest stages at the present time. It is quite unclear as to the extent to which this competition will actually occur and the degree to which competitive pressures will constrain LEC rates. While State Advocates recognize that growing competition in the LEC industry may force revision in the manner in which access rates are established, that point has not yet been reached by any means. Deregulation of LEC access rates at this early date would be entirely premature. The most market based solution would be to have the decision of common line recovery made at the

point where there is the greatest market choice. That is in the billing from the IXCs to their end users.

B. Unbundled Elements Do Not Constrain Access Charges

In ¶ 170, the FCC asks whether the availability of unbundled network elements will specifically constrain access charges, or instead only constrain the rates of the overall package of jointly provided services. State Advocates offer that unbundled element rates may constrain rates for the package of jointly provided services overall, but unbundled network element rates do not significantly constrain switched access charge rates specifically.

Competition from unbundled network elements will not specifically constrain interstate switched access rates. The price for the unbundled network elements will be much greater than the price for switched access service by itself and, therefore, is not competitive with, or constraining on, switched access service. Since the common line represents the largest LEC category of cost and the greatest portion of access charges,[35] the common line will illustrate this principle.

Assume that for a hypothetical telephone company, the cost of the common line facility is $20 per month.[36] Assume that this $20 common line revenue requirement is currently being recovered from the various services that share that common line, as shown below:

[35]$7.1 million subscriber line charge + $3.7 million carrier common line from Table 1, ¶29 of FCC Order No. 96-488.

[36]Appendix D to the FCC's Interconnect Order, No. 96-327 found loop proxy ceiling rates varied from $25.36 to 9.83.

Current Common Line Cost Recovery for Hypothetical Telephone Company

Interstate Subscriber Line Charge (SLC)	Paid by the end user	$ 3.50
Interstate carrier common line charge (CCLC)	Paid by the interstate toll carriers	$ 2.00
Intrastate CCLC	Paid by intrastate toll carriers	$ 1.50
Intrastate imputed CCLC included in toll	Imputed to intrastate toll carriers	$ 1.50
Portion of Local rate that is for recovery of common line cost	Paid by end user	$11.50
Total		$20.00

The availability of an unbundled loop will not significantly constrain the interstate switched access charge for locations where switched access only would be provided over that unbundled loop. All of the toll carriers combined are supporting $5.00 of the total $20 cost in this example.[37] That includes both interstate and intrastate access and includes both actual and imputed charges to the IXCs. Even if all of the interstate toll carriers went together and replaced switched access provided over the common line with an unbundled loop, they would have replaced $5.00 in charges with a $20 unbundled loop charge. This is not an economical replacement. The switched access charges support only a small portion of the total costs of the shared common line. If those switched access services were instead provided over an unbundled loop element that was not shared, then switched access would have to support 100% of those costs. Such a proposal is not competitive with switched access over the common line. The numbers in the above hypothetical may not be exactly correct for every state, but the effect is similar.

[37]Interstate CCLC of $2.00 + Intrastate CCLC of $1.50 + Intrastate imputed CCLC of $1.50 = $5.00.

In addition, the unbundled loop would be even less competitive with interstate switched access than the above example illustrates. The interstate CCLC revenues shown above are the total for all IXCs. One specific IXC would not normally be carrying all of the originating and terminating traffic.

The simple fact is that the toll carriers receive a great advantage from using the common line because the majority of the common line costs are supported by local exchange service. If the switched access service was provided over an unbundled loop or other line for which the majority of the costs were not being supported by local exchange service, that would increase the toll carriers' cost of access greatly. The switched access services benefit from the rates paid for local exchange service.

The availability of an unbundled loop might, at best, constrain the total rates for the package of services, but the availability of the unbundled loop will not specifically cause the switched access charges to be reduced or constrained.

It might appear that high volume locations might be an exception to the above argument. For example, if the access volumes for a specific location were so high that the CCLC would be $40 per month, at first glance it would appear that the availability of an unbundled loop would constrain the per minute CCLC rate at least at such a high volume location.[38] However, that is not the case. Such a high volume location would already normally be served by special access, not by switched access. The present tariffs already offer special access as an alternative to switched access. Under special access, the carriers pay a fixed monthly charge and, in return,

[38]It would be economical for the IXCs to use a $20 unbundled loop instead of paying $40 in CCLCs for access to and from that location.

receive a channel connecting the customer premise to the IXC. There is no per minute charge in special access. The IXCs can place as much traffic on the special access line as they can physically fit on that line at no additional charge. Therefore, in a location where the switched access charge associated with the loop is $40 per month, the IXC would most likely have already converted its usage to special access. Thus, the IXC would already be paying the $20 cost for a dedicated special access loop in the above hypothetical.[39] The availability of an unbundled loop would not provide any significant additional constraint on switched access rates, other than the constraint that already exists due to the existing availability of special access.

If the unbundled loop rate was somewhat different than the special access loop rate, that could have an effect only on the few customers right at the margin. However, this would have no effect on the vast majority of the customers who are either above or below the margin. Thus, the unbundled loop rate will not constrain the CCLC switched access charges significantly more than the existence of special access rates already have.

Paragraph 8 and ¶ 43 imply that the incumbent LECs are at a disadvantage competing for high volume end users because of the LECs' switched access rates. That is an incorrect assumption. The primary type of LEC-provided access used for high volume locations is special access, not switched access.[40] For high volume locations, the special access rate is generally more economical than is the "per minute" switched access rate.

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[39]Switched access may be used for overflow or other limited applications at high volume locations, but special access, instead of switched access, is the primary means of access used at high volume locations.

[40]Switched access may be used for overflow or other limited applications for a high volume location, but it generally is not the primary form of access for high volume locations.

C. Issues Related To Geographic Deaveraging

Paragraph 171 claims that the unbundled rate elements must be geographically deaveraged because when the unbundled elements are averaged, the "...ability to substitute unbundled elements for access will not drive down access rates to their efficient level...".

This argument for geographically deaveraging unbundled rate elements is incorrect because, as demonstrated in a prior section, the unbundled rate elements will not drive down access rates, regardless of whether those unbundled rate elements are geographically averaged or not. The danger of deaveraging, whether geographic or otherwise, is that this deaveraging will most likely be used by the LECs to extract a higher contribution in those areas where they have little competition (i.e., monopoly power) than the contribution they may obtain from those areas where they face competition. In fact, NYNEX has clearly indicated that it would use their deaveraging powers, if given, to extract higher contribution in those areas where it faces no real competition than it can obtain from those areas where it faces competition.

> For example, NYNEX would deaverage its rates downward in high-density areas to permit it to respond to competition, while leaving its other rates unchanged in order to permit it to continue recovering the existing contribution included in those rates. (¶114)

In another example, a U S WEST switched access witness testifying in the State of Utah in support of geographic deaveraging for her company's intrastate switched access services, states:

> I am recommending that switched access prices be zoned to address the specific geographical areas where competition is likely to emerge first.[41]

[41]U S WEST Communications, Utah Docket 95-049-05, Direct testimony of Barbara M. Wilcox, page 25, lines 17-19.

The Company's stated pricing objective for switched access services in that proceeding was as follows:

> Price switched access by zone so that a lower price is charged in zones with high traffic density and high potential for competition.[42]

U S WEST made a similar proposal to deaverage switched access rates using zone pricing in the state of Washington. The Washington Utilities and Transportation Commission rejected the Company's proposal stating:

> USWC did not attempt to make an argument that zone pricing was cost based but rather in response to competition.[43]

These examples demonstrate that there is reason to believe that cost differences are not the true or only basis for the LEC's push to deaverage switched access rates. The State Advocates submit that the Commission cannot guarantee that any difference in access rates across geographic areas will be directly related to corresponding differences in costs, and not based upon differences in the amount of monopoly power that the LECs have in those areas. As a result, switched access rates should not be deaveraged.

Allowing the LECs to extract greater contribution from those areas where they have monopoly power is an abuse of monopoly power and is not setting rates that are equal to the rates that would be set if competition actually existed, which the FCC has acknowledged is one of the valid goals of correct regulation. (¶ 114)

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[42]Ibid, page ii.

[43]Fifteenth Supplemental Order, Washington Docket No. UT-950200, dated April 11, 1996, page 117.

In ¶182, the FCC expresses the concern that if switched access rates are not geographically deaveraged and unbundled network elements are deaveraged, this would not allow the incumbent LECs' access services to meet competition from the unbundled network elements in low cost areas. This argument that the switched access rates must be geographically deaveraged because they are related to the unbundled network rate elements is incorrect. The switched access rates are far more strongly related to the IXCs' end user rates which cannot be geographically deaveraged.

This argument is invalid for a number of reasons. First of all, unbundled network elements are not competitive with switched access. The connection between unbundled network element rates and switched access rates is marginal, at best.

By comparison, the connection between the switched access rates and the toll rates of the IXCs is much stronger. Switched access charges represent a significant portion of the IXCs' cost of doing business. (This is not an inappropriate result since the cost of the facilities needed to provide access to all of the premises is a very significant cost.) The IXCs' toll rates cannot be geographically deaveraged. The 1996 Act has required that the IXCs charge their end user customers no higher rates in rural and high cost areas than they charge in urban areas, and has required the charges in one state be no higher than the charges in other states.[44]

There are numerous state and federal tariffs and programs that help offset the difference in cost of serving different areas. At least a portion of any differences in costs to serve different geographic areas may already be supported through other mechanisms. These include:

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[44]¶ 186 of the Notice refers to Section 254(g) of the Act.

(1) Many telephone companies require customers to make a payment, sometimes called "payments in aid of construction," to assist in the cost of installing facilities to locations that are more than a specified distance away from the existing telephone company facilities. (2) Some telephone companies charge higher rates to customers in less dense areas, sometimes called "outside the base rate area" charges. (3) The current universal service fund (USF) (¶36.601), as well as the USF that the Joint Board has recommended replace it, provide support to high cost areas. (4) Some states have their own programs for providing further assistance to high cost areas. For example, in Colorado, the Public Utility Commission has established the Colorado High Cost Fund[45] and the Rural Facilities Improvement Program (RFIP).[46] "Rate Riders" supported the conversion from multi-party to single party service. Also, Colorado has a program entitled the Switch and Facilities Enrichment (SAFE) program, which assisted in upgrading switching equipment primarily in rural areas.[47] In short, there are numerous charges and programs which may help to offset at least part of the difference in costs incurred in serving different geographic areas.[48]

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[45]US West Communications, Colorado Docket No. 96A-218T, Direct testimony of USWC witness Brian G. Johnson, page 11, lines 32-33.

[46]Ibid, page 14, lines 19-22.

[47]Ibid, page 3, line 19.

[48]We have not tried to determine what portion of the assistance from all of these programs do or should flow to interstate access charges, but it is clear that there are a number of support mechanisms that would have to be analyzed prior to reaching a conclusion that geographic deaveraging of access charges is required.

An additional problem is that a large part of the cost of LECs' services are the cost of joint, common and common overhead costs. All of these costs do not necessarily vary by geographic area.

As is noted in ¶186 of the FCC's Notice, Section 254(g) of the 1996 Act requires IXCs' rates to subscribers in rural and high cost areas to be no higher than the rates for subscribers in urban areas. However, we are not aware of any requirement that the IXCs must serve all areas of a state. Therefore, if the switched access rates are set significantly higher in some geographic areas than in others, it is reasonable to expect that some IXCs may serve only the lower priced access rate areas and choose not to serve the higher priced access rate areas. This would be a reasonable reaction by the IXCs, since the access charges are (properly) a significant portion of the IXCs' total cost of doing business. Even if an IXC technically offered service throughout the state, they could advertise and telemarket particularly advantageous packages or plans primarily in the lower access charge portions of the state.

Very few end user customers find the interexchange rates which available to them by looking at the tariffs. The IXCs which chose to serve only the lower priced switched access rate areas could gain a significant price advantage over the IXCs serving all areas. This could ultimately force the other IXCs to also abandon the higher access rate rural areas in order to remain competitive. If different access charges are established for different geographic areas, it is reasonable to expect that over time the higher access rate areas would end up being served by IXCs with higher rates or by higher priced service offerings while the low access rate areas would be served primarily by IXCs that have lower rates or by lower priced service offerings.

In addition, the IXCs can choose to offer "promotional" rates to some customers, but not others. For example, AT&T currently has a $0.10 per minute, anytime, flat rate as a six month promotional rate. However, that rate is available only to customers of certain LECs, and is offered only to certain customers at the manager's discretion during an AT&T initiated call. This plan is not universally available, even if customers request it.[49]

Establishing geographically deaveraged switched access charges is inconsistent with and significantly undermines the goal of establishing uniform IXC rates in all geographic areas. We recommend that the switched access rates not be geographically deaveraged at this time.

In ¶ 67, the FCC asks whether geographic averaging of the SLC is an implicit subsidy to universal service that is inconsistent with the requirements of Section of 254(e), which requires that any support to universal service must be explicit. The answer to this question is no. A requirement that any support to universal service be explicit does not prevent averaging, geographic or otherwise. In many respects, Section 254 requires universal service rate averaging so that rural rates continue to be comparable to urban rates.

The SLC is a charge that customers must pay in order to obtain local telephone service and, therefore, is a part of the definition of universal service. It is not a payment being collected from other services and being paid to support universal service. The payment of

[49]See Telecommunications Report, October 28, 1996, page 36.